

### **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

The following substantially repeats the remarks made in the unentered amendment faxed March 7, 2005.

Claim 1 has been amended to recite that the fermentation is stopped while the pH remains within the range of 5.7 and above. This is supported at page 9, first paragraph.

Claim 11 has been amended to make it even clearer that the unfermented milk is added after the fermentation-stopping step recited in claim 1. This is supported, e.g., at page 26, last paragraph of the specification. There, the pre-mix that had been subject to fermentation A to pH 6.2, and which was subjected to a stopping step (page 24, first paragraph), was diluted with unfermented pre-mix. Likewise, fermentation B is diluted with unfermented pre-mix at the top of page 27.

Claims 12 and 13 have been canceled without prejudice, to expedite prosecution.

The amendment to claim 1, increasing the lower value for the pH range, even further distinguishes the invention over the Schol et al. reference. It is submitted that Schol et al. provide no motivation for one of ordinary skill to stop the fermentation at such a high pH given the upper limit of their range, and particularly given the pH levels of Schol et al.'s examples. Therefore, it is respectfully requested that the rejection based on Schol et al. be withdrawn.

Aebischer et al. describe at column 3 lines 40-42 a process wherein the pH is maintained at between 6 and 7.3, for example. In contrast, the present claims recite

that the pH is unregulated during fermentation. On page 6, the present specification describes "unregulated" as "the pH is not artificially maintained (for example, by inclusion of buffer salts in the growth medium or by titration with base) in the desired range during fermentation." Aebisher et al. specifically indicate that they maintain the pH. It appears that Aebisher et al. teach the opposite of what is presently claimed. Aebisher et al. regulate the pH of their fermenting composition during the fermentation process. Citation by the Office of any secondary references showing ways to maintain pH does not negate Aebisher et al.'s shortcoming wherein they regulate pH during fermentation.

Applicants enclose an original of a declaration by inventor Jan Willem Sanders concerning standard practice in the type of fermentating described in Aebisher et al. A photocopy was furnished earlier.

Present Claim 11 does not negate applicant's position. Claim 11 has been amended to make it even clearer that the unfermented milk is added after the fermentation stopping step of claim 1. The non-regulation which claim 1 recites is that which occurs during fermentation. Therefore, even if Aebisher et al. were to "maintain" their pH during fermentation by diluting with unfermented milk, this is not in accordance with claim 1.

In view of the foregoing, it is respectfully requested that the application, as amended, be allowed.

Respectfully submitted,



---

Gerard J. McGowan, Jr.  
Attorney for Applicant(s)  
Reg. No. 29,412

GJM/pod  
(201) 894-2297